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STATE OF CALIFORNIA

Fish and Game Commission

February 18, 2011

This is to provide you with a copy of the notice of proposed regulatory action relative to Section 632, Title 14, California Code of Regulations, relating to Southeast Farallon Island Special Closure, which will be published in the California Regulatory Notice Register on February 18, 2011.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Ms. Marija Vojkovich, Marine Region Manager, Department of Fish and Game, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Sherrie Fonbuena
Associate Governmental Program Analyst

Attachment

**TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 203.1, 205(c), 219, 220, 1590, 1591, 2860, 2861, and 6750, Fish and Game Code; and sections 36725(a) and 36725(e), Public Resources Code and to implement, interpret or make specific sections 200, 202, 203.1, 205(c), 219, 220, 1580, 1583, 2861, 5521, 6653, 8420(e), and 8500, Fish and Game Code; and sections 36700(e), 36710(e), 36725(a) and 36725(e), Public Resources Code, proposes to amend Section 632, Title 14, California Code of Regulations, relating to Southeast Farallon Island Special Closure.

Informative Digest/Policy Statement Overview

On August 5, 2009, the California Fish and Game Commission (Commission) adopted regulations to implement marine protected areas (MPAs) in the north central coast region of California, the second study region considered under the Marine Life Protection Act (MLPA, Stats. 1999, ch. 1015). These regulations went into effect May 1, 2010. Subsequent to their implementation, an error was identified in the regulations for the special closure established at Southeast Farallon Island.

As originally proposed by the Blue Ribbon Task Force (BRTF), the Southeast Farallon Island Special Closure specified the area from Fisherman's Bay to East Landing be a seasonal closure only (from December 1 through September 14), thus allowing boat access during the remainder of the year. However, the regulation that was adopted and went into effect on May 1, 2010 did not include this seasonal component for the area, and was instead defined in regulation as a year-round closure. This error was identified through public testimony. A review of supporting documents from the regulation development process verified that the original intent was to make this portion of the special closure seasonal in nature, and that inclusion of a year-round closure in this area was a drafting error. Therefore, subsection 632(b)(33)(B) is proposed to be amended to add a seasonal component to the closure area between Fisherman's Bay and East Landing within the Southeast Farallon Island Special Closure, as originally intended and reflected in the maps and supporting documents.

In addition, feedback from enforcement and the public has highlighted that the complexity of the regulations language describing boundaries and exceptions to year-round closure are confusing as described in the existing regulations. As a result of the confusion, there is heavy reliance on mapped images in order to understand the written boundaries. Therefore, subsection 632(b)(33)(B) is proposed to be modified to improve clarity and ease public understanding by sub-dividing the description of areas that provide exceptions to year-round closure, and modifying only the description of the boundaries without modifying the boundaries.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Embassy Suites Los Angeles International Airport-North, 9801 Airport Boulevard, Los Angeles, California, on Thursday, March 3, 2011, at 8:30 a.m., or as soon thereafter as the matter may be heard. ✓

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Lake Natoma Inn, 702 Gold Lake Drive, Folsom, California, on Thursday, April 7, 2011, at 8:30 a.m., or as soon thereafter as the matter may be heard. ✓ It is requested, but not required, that written comments be submitted on or before April 1, 2011 at the address given below, or by fax at (916) 653-5040, or by e-mail to

FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on April 4, 2011. All comments must be received no later than April 7, 2011 at the hearing in Folsom, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address. ✓

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Jon K. Fischer, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Jon K. Fischer or Sherrie Fonbuena at the preceding address or phone number. **Ms. Marija Vojkovich, Regional Manager, Department of Fish and Game, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Allowing seasonal access to the area from Fisherman's Bay to East Landing, within the Southeast Farallon Island Special Closure, may reduce potential local adverse impacts identified in OAL File 2010-0413-02SR and may benefit the local economy.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Any additional costs to State agencies for enforcement, monitoring, and management of MPAs are difficult to estimate and depend on not only the impacts of the proposed regulation but also other regulations and processes. Given that the proposed activities were previously occurring in the area from Fisherman's Bay to East Landing, within the Southeast Farallon Island Special Closure, it is unlikely that changes to existing enforcement would be required.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: February 8, 2011

Jon K. Fischer
Acting Executive Director